

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

ALLYSON KLECKY,	:	APPEAL NO. C-110116
	:	TRIAL NO. DV-1001131
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
ABRAHAM KLECKY,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Abraham Klecky appeals the trial court’s judgment issuing a domestic violence civil protection order (“CPO”) that prohibits him from having contact with his wife, Allyson Klecky. We affirm.

In his sole assignment of error, Abraham claims that the trial court’s judgment was against the weight of the evidence. Some of his arguments also attack the sufficiency of the evidence. Our standard of review is whether there was sufficient, credible evidence to support the trial court’s judgment.²

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

² See *Downs v. Strouse*, 10th Dist No. 05AP-312, 2006-Ohio-505; *Abuhamda-Sliman v. Sliman*, 161 Ohio App.3d 541, 2005-Ohio-2836, 831 N.E.2d 453.

Abraham first argues that the trial court erred when it determined that he had committed domestic violence against Allyson under R.C. 3113.31(A)(1)(a). We disagree.

R.C. 3113.31(A)(1)(a) defines “domestic violence” as “[a]ttempting to cause or recklessly causing bodily injury.” At the CPO hearing, Allyson testified that her husband had struck or pushed her multiple times, citing 13 incidents of physical aggression. At least two of these occasions resulted in bodily injury. One incident was witnessed by Allyson’s mother, who corroborated Allyson’s testimony. At the hearing, Abraham denied that he had been abusive. He claimed that, in some instances, Allyson had been the aggressor and also suggested that she should not be believed because he claimed that she was mentally unstable.

Where there is conflicting testimony, the trier of fact is in the best position to judge the credibility of witnesses.³ Here, the trial court determined that Allyson’s version of events was more credible. Based on Allyson’s testimony and that of her mother, we find that the trial court’s determination that Abraham had committed an act of domestic violence was supported by sufficient, credible evidence.

Abraham next claims that the trial court erred by issuing the CPO because (1) Allyson’s fear of future harm was unreasonable, (2) the trial court based its decision on past acts, alone, and (3) Allyson did not establish the existence of a present threat of harm. These arguments have no merit.

When granting a protection order, the trial court must find that the petitioner has shown by a preponderance of the evidence that the petitioner or the petitioner’s family or household members are in immediate and present danger of domestic

³ *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus; *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 81, 461 N.E.2d 1273.

violence.⁴ In addition, petitioner's fear of imminent danger must be reasonable. Abraham is correct that past acts, alone, do not warrant the issuance of a CPO. But evidence of a history of domestic violence by the respondent against petitioner is relevant to determining the reasonableness of petitioner's fear of domestic violence.⁵

Here, there was sufficient evidence to demonstrate that Allyson's fear of future harm was reasonable. Allyson testified to numerous incidents of physical aggression by Abraham, and she testified that she had fled her home in Florida to escape her husband's increasingly abusive behavior. And the one time that the couple had been together since Allyson had left her home, Abraham had acted in a threatening manner towards her. Based on this history, the trial court did not err in finding that it was reasonable for Allyson to fear future harm.

There was also sufficient evidence presented that Allyson was in imminent danger of harm. "Imminent" means "ready to take place," "near at hand," or "impending."⁶ Here, the trial court determined that Abraham's physical aggression toward Allyson had become "progressively worse" over time. The trial court also found that it was inevitable that Allyson and Abraham would be in close proximity soon based on pending litigation and mediation. These findings are supported by credible evidence.

Given Abraham's pattern of abuse that had escalated to the point that Allyson had moved out of her home; Abraham's threatening behavior the one time the couple had been together; and the inevitability of future contact, we find no error in the trial

⁴ R.C. 3113.31(D)(1) and (2); *Felton v. Felton*, 79 Ohio St.3d 34, 1997-Ohio-302, 679 N.E.2d 672, paragraph two of the syllabus.

⁵ See *Fleckner v. Fleckner*, 177 Ohio App.3d 706, 2008-Ohio-4000, 895 N.E.2d 896, ¶21.

⁶ *Id.* at ¶20.

court's decision to issue a CPO.⁷ Abraham's sole assignment of error is overruled. The trial court's judgment is affirmed.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., HENDON and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on August 19, 2011

per order of the Court _____.
Presiding Judge

⁷ Cf *Downs*, supra, at ¶12.